COURT OF APPEALS
DIVISION II

07 MAY 21 PM 4: 47
STATE OF WASHINGTON
BY

NO.: 35291-5-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

ROBERT R. MITCHELL, et al, Appellants

v.

MICHAEL A. PRICE, et al, Respondents.

RESPONSIVE BRIEF OF RESPONDENTS PRICE

COMFORT, DAVIES & SMITH, P.S. Steven W. Davies, WSBA 11566
Jennifer M. Azure, WSBA 30494
1901 65th Ave. W. Ste 200
Fircrest, WA 98466
(253)565-3400

Attorneys for Respondents Price

TABLE OF CONTENTS

INTRO	INTRODUCTION						
			UES PERTAINING TO ASSIGNMENTS				
I.	FACT	ΓS2					
	A.	Statem	nent of Substantive Facts				
	B.	Statem	nent of Procedural Facts4				
II	ARGU	UMENT AND ANALYSIS 7					
	A.	Standa	ard of Review7				
	B.		ommercial did not make a valid assignment m				
		1.	The assignment of claims was a distribution to the members				
		2.	The purported assignment clearly was violative of Bankruptcy Law				
		3.	Judicial estoppel applies to this case10				
	amended complaint to add NW Co		ourt properly denied the motion for a third ed complaint to add NW Commercial as a ff				
j	D.		sclosure of documents in this action through ery resulted in a waiver				
]	E.	Summary judgment based upon the statute of limitations was appropriate					
		1.	Statute of limitations affects the Prices and				

		the alleged claims against them
	2.	Appellants Cause of Action accrued when they knew or should have known that there may be injury or damage
F.	with k of lim invalid	ells claims were frivolous as they were advanced mowledge that they were beyond the statute itations, that the claims were based upon an d assignment, and that there was no evidence of is for personal liability against the Prices 21
	1.	Frivolous
	2.	Statute of Limitations
	3.	Invalid Assignment
	4.	Personal Liability of Price
ATTORNEYS	S FEES	27
CONCLUSIO	N	
APPENDIX		

TABLE OF AUTHORITIES

FEDERAL CASES

In re Grand Jury (Inpounded), 138 F.3d 978, 981 (3.d Circ. 1998) 15
WASHINGTON STATE SUPREME COURT CASES
Accord Enterprise Timber, Inc. v. Washington Title Ins. Co. ,76 Wn.2d 479, 482, 457 P.2d 600 (1969)
Allen v. State , 118 Wn.2d 753, 760, 826 P.2d 200 (1992) 19
American Sur. Co. v. Sundberg , 58 Wn.2d 337, 344, 363 P.2d 99 (1961), cert. denied, 368 U.S. 989, 82 S. Ct. 598, 7 L. Ed. 2d 526 (1962)
Biggs v. Vail , 119 Wn.2d 129, 133-37, 830 P.2d 350 (1992) 22
Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters , 100 Wn.2d 343, 349, 670 P.2d 240 (1983)
Green v. APC ,136 Wn.2d 87 at 96-97 (1998)
Harris v. Drake, 152 Wn.2d 480, 495, 99 P.3d 872 (2004) 14, 15
Haslund v. City of Seattle , 86 Wn.2d 607, 619, 547 P.2d 1221 (1976)
Hawkes v. Hoffman , 56 Wash.120, 126, 105 P. 156 (1909) 20
Herron v. Tribune Publ'g Co. , 108 Wn.2d 162, 165-66, 736 P.2d 249 (1987)
Holland v. Boeing Co. , 90 Wn.2d 384, 390-91, 583 P.2d 621 (1978) 8
Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.2d 1068 (2002) 7
Smith v. Safeco Ins. Co. , 150 Wn.2d 478, 485, 78 P.3d 1274 (2003) 7

U.S. Oil & Refining Co. v. State Dep't of Ecology , 96 Wn.2d 85, 91, 633 P.2d 1329 (1981)
Washington Fed'n of State Employees v. Office of Fin. Management, 121 Wn.2d 152, 157, 849 P.2d 1201 (1993)
Wilson Court Ltd. P'ship v. Tony Maroni's, Inc. ,134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998)
Wilson v. Horsley , 137 Wn.2d 500, 505, 974 P.2d 316 (1999) 11, 13
Wilson v. Steinbach , 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)7, 17
WASHINGTON STATE COURT OF APPEALS CASES
Bill of Rights Legal Found. v. The Evergreen State College , 44 Wn. App. 690, 696-97, 723 P. 2d 483 (1986)
Bogle & Gates , P.L.L.C. v. Zapel 121 Wn. App. 444 at 448 (2004) 17, 18
Crisman v. Crisman, 85 Wn. App. 15, 19, 931 P.2d 163 (1997) 19, 20
Culpepper v. Snohomish County Dep't of Planning & Cmty. Dev., 59 Wn. App. 166, 796 P.2d 1285 (1990)
Cunningham v. Reliable Concrete Pumping , 126 Wn. App. 222, 108 P.3d 147 (2005)
DeAtley v. Barnett 127 Wn. App. 478 at 483 (2005) 9, 11
Forster v. Pierce County, 99 Wn. App. 168, 991 P.2d 687 (2000) 23
Hedlund v. Vitale 110 Wn. App. 183 at 188, (2002)
Hudson v. Condon , 101 Wn. App. 866 at 875 (2000)
Jeckle v. Crotty, 120 Wn. App. 374, 85 P.3d 931 (2004) 23
Kirkham v. Smith , 106 Wn. App. 177, 181, 23 P.3d 10 (2001) 12

Linklater v. Johnson , 53 Wn. App. 567 (1989) 9, 10	
Reid v. Dalton, 124 Wn. App. 113, 100 P.3d 349 (2004)	
Richter v. Trimberger , 50 Wn. App. 780, 786, 750 P.2d 1279 (1988)	
Sea-Van Investments v. Hamilton, 71 Wn. App. 537, 861 P.2d 485, (1993)	
Skimming v. Boxer, 119 Wn. App. 748, 82 P.3d 707 (2004) 23	
Smith v. Okanogan County , 100 Wn. App. 7, 24, 994 P.2d 857 (2000)	
Suarez v. Newquist, 70 Wn. App. 827, 855 P.2d 1200 (1993) 23	
Tex Enterprises, Inc. v. Brockway Standard, Inc., 110 Wn. App 197, 39 p.3d 362 (2002), reversed on different issue, 149 Wn2d 204, 66 P.3d 625 (2003)	
Walla v. Johnson , 50 Wn. App. 879, 883, 751 P.2d 334 (1988) 13, 14	
Zaleck v. Everett Clinic , 60 Wn. App. 107, 112, 802 P.2d 826 (1991)	
STATE STATUTES	
RCW 19.86.120	
RCW 25.15.010	
RCW 25.15.235(1)	
RCW 4.16.040(1)	
RCW 4.16.080	
RCW 4.16.080(4)	

RCW 4.84.185
FEDERAL STATUTES
11 U.S.C. §§363, 521(1), 554; FED R. BANKR. P. 1007
RULES
CR 15(a)
CR 15(b)
CR 56(c)
RAP 18.1
RAP 18.1(a)
RAP 18.1(b)27
RAP 2.5(a)
RAP 9.12

INTRODUCTION

COME NOW the respondents, Michael A. Price, Thomas W. Price and "Jane Doe" Price (hereinafter referred to collectively as "Price"), by and through their attorneys, Comfort, Davies & Smith, P.S. and Steven W. Davies, and submit their brief in response to the appellants (hereinafter referred to collectively as "Mitchell") appeal. The respondents, Michael A. Price, Thomas W. Price and "Jane Doe" Price, hereby adopt and incorporate the factual assertions and legal arguments expressed by respondents Reid, Byrne, and Oldfield as if fully set forth herein.

The trial court properly granted summary judgment dismissing the claims by Mitchell against Byrne, Reid, Oldfield and Price. The trial court properly awarded attorney's fees as this action was frivolous, was advanced without reasonable cause, and did not involve unresolved theories nor issues of first impression.

RESPONSE TO ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- 1. The trial court did not err and properly found that NW Commercial did not make a valid assignment of claims to Mitchell and granted partial summary judgment.
- 2. The trial court did not err in granting summary judgment based upon the statute of limitations.

- 3. The trial court did not err and properly dismissed the plaintiffs' claim of personal liability as to defendants Price.
- 4. The trial court did not err and properly awarded attorneys' fees to all defendants, including the Prices, on the basis of defending a frivolous action.

I. FACTS

A. Statement of Substantive Facts

Throughout the appellate brief and the trial court record there is no mention of any wrongdoing on the part of the Prices. The Prices were members only of NW, LLC. FFCL 2; CP

At the time of filing the lawsuit, the plaintiffs were investors in NW Commercial Loan Fund, LLC, which was in bankruptcy. FFCL 3; CP _____. Although one of the plaintiffs had purportedly assigned NW Commercial Loan Funds' claim to the plaintiffs, the assignment of the claim was made after NW Commercial Loan Fund had filed bankruptcy. FFCL 3; CP _____. NW Commercial Loan Fund had not listed any claims against Price in its bankruptcy filings. FFCL 3; CP _____. NW Commercial Loan Fund had not

Findings of Fact and Conclusions of Law Regarding Defendants Prices' Motion for Attorney's Fees and Costs and Judgment were entered by the trial court on May 18, 2007. The clerks papers were supplemented by the defendant Oldfield. True and correct copies of the aforementioned pleadings are included in Appendix A.

given notice nor received permission from the bankruptcy court to assign any NW Commercial Loan Fund claims against Price or any of the respondents. FFCL 3; CP _____.

At the time of filing the lawsuit in July of 2004, Mitchell knew that most of their claims (misrepresentation, fraud in the inducement, breach of fiduciary duty, and negligence) had a statute of limitations of three years or less from the time of discovery. FFCL 4; CP _____. Mitchell also, in March of 2001, more than three years before filing suit, met with defendant Byrne and defendant Oldfield to discuss the same issues that were the subject of this litigation. FFCL 4; CP _____.

Furthermore, on July 9, 2001, more than three years before filing suit, attorney Michael H. Woodell, on behalf of Mitchell, sent a letter to Mitchell setting forth substantially all of Mitchells' claims demanding that insurers be put on notice of claims and damages to Mitchell. FFCL 5; CP _____. On December 20, 2003, attorney Miles A. Yanick, delivered a memorandum to plaintiffs reciting a chronology of facts regarding the litigation and advising plaintiffs "to be safe, any action should be filed no later than February 2004". FFCL 4; CP _____. Despite these clear warnings, the plaintiffs did not file suit until July 30, 2004. FFCL 6; CP _____.

Both Prices were members only, not managers, of NW, LLC, and were not involved with day-to-day operations. FFCL 2; CP _____. Further, the Prices were not managers of any entity and were not members of NW Commercial Loan Fund. FFCL 2; CP ____. The Prices had no knowledge of the 1999 Graham Square assignments of deeds of trust. FFCL 2; CP ____. None of plaintiffs were aware of any misrepresentation by either of the Prices or of any facts in support of their claims against the Prices regarding breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty and negligence. FFCL 2; CP ____.

B. Statement of Procedural Facts

On July 30, 2004, Mitchell filed a complaint for breach of contract, negligence, misrepresentation, fraud, breach of fiduciary duty, negligence, professional malpractice and violation of the Consumer Protection Act. FFCL 1; CP _____. The claims against Price in this complaint were limited to claims of breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence. FFCL 1; CP ____.

On October 31, 2005, the first Motion for Partial Summary Judgment

was made and granted. FFCL 8; CP _____; RP 26; CP 999-1005. The trial court granted partial summary judgment in favor of all defendants, including the Prices, and dismissed all claims "assigned by NW Commercial Loan Fund to the plaintiffs". FFCL 8; CP _____. Appendix B. The court found that the purported assignment was not disclosed on the bankruptcy schedule. RP 26.

On May 19, 2006, after additional discovery, the trial court granted summary judgment in favor of all defendants, including the Prices, and dismissed all of Mitchells' remaining claims with prejudice. FFCL 9; CP

_____; RP 90-91; CP 1884-1887; Appendix C.

The Court entered findings and order for entry of final judgment on all claims by stipulation of the parties. CP 2224. The court certified the judgments as final and appealable. CP 2235. Mitchell followed by filing this appeal. CP 2237.

A motion was made and granted for attorneys fees by Price pursuant to RCW 4.84.185. FFCL 6, 13; CP _____; CP 1892, 2015, 2045, 2210-2214; Appendix D. The trial court held that Mitchells' pursuit of claims in violation of the statute of limitations and based on an invalid assignment by NW Commercial was frivolous. FFCL 8, 9/3, 4, 5; CP _____. As such, the

Prices were entitled to, and were awarded, on June 23, 2006, reasonable attorney's fees and costs in the amount of \$37,912.52 for Tom W. Price and "Jane Doe" Price and in the amount of \$30,472.71 for Michael A. Price. FFCL 10, 11, 12, 13; CP _____; CP 2205-13. The fees charged and costs incurred by respondents Prices' counsel were reasonably necessary in order to defend against appellants' claims. FFCL 10; CP _____. The appellants did not object to the reasonableness of Prices' attorney's fees and costs incurred. FFCL 11; CP _____.

On June 23, 2006, the court ordered:

ORDERED, ADJUDGED and DECREED that the **respondents' Price** motion for an award of reasonable expenses, including attorney's fees and costs, is **granted**.

It is further ORDERED, ADJUDGED and DECREED that the respondents Tom W. Price and "Jane Doe" Price are awarded reasonable attorney's fees in the amount of \$35,066.00, costs in the amount of \$2,836.81, for a total award of \$37,912.52; the defendant Michael A. Price is awarded reasonable attorney's fees in the amount of \$30,463.00, costs in the amount of \$9.71, for a total award of \$30,472.71. Said respondents are entitled to judgment in the aforementioned sums with interest at the rate of twelve percent (12%) per annum from today's date until paid in full. (Emphasis Added).

FFCL 13; CP .

On Friday, May 18, 2007, Findings of Fact and Conclusions of Law

and Judgment were entered at the trial court level memorializing the prior orders of the court and a judgment for attorneys fees. Appendix A. Again, there was nothing submitted by the plaintiffs supporting Mitchells' argument that the Prices had committed any wrongdoing or that there was any basis for personal liability.

III. ARGUMENT AND ANALYSIS

A. Standard of Review

The court reviews a grant of summary judgment de novo. **Jones v. Allstate Ins. Co.**, 146 Wn.2d 291, 300, 45 P.2d 1068 (2002). The court will engage in the same inquiry as the trial court, viewing all facts and inferences in a light most favorable to the nonmoving party. **Wilson v. Steinbach**, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate where 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' CR 56(c). The court will affirm a grant of summary judgment where reasonable minds can reach only one conclusion based on the admissible facts in evidence. **Smith v. Safeco Ins. Co.**, 150 Wn.2d 478, 485, 78 P.3d 1274 (2003).

In regard to appellate review of Findings of Fact and Conclusions of law, the review is limited to determining whether the findings are supported by substantial evidence, and whether the findings support the trial court's conclusions of law and judgment. **Sea-Van Investments v. Hamilton,** 71 Wn. App. 537, 861 P.2d 485, (1993) Citing **Holland v. Boeing Co.**, 90 Wn.2d 384, 390-91, 583 P.2d 621 (1978).

B. NW Commercial did not make a valid assignment of claims to the plaintiffs.

Mitchell argues that he was validly appointed as a manager of NWCLF. The Prices disputed this and have not abandoned this position. Mitchells' attempt at assignment of claims was violative of both bankruptcy law and public policy.

1. The assignment of claims was a distribution to the members.

The assignment of claims constituted an illegal distribution of assets and was invalid. This determination was properly made by the trial court. An LLC cannot simply make distributions to its members when the LLC is insolvent or the distribution would render it so. RCW 25.15.235(1). RCW 25.15.235 states in part:

(1) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution,

after giving effect to the distribution (a) the limited liability company would not be able to pay its debts as they became due in the usual course of business, or (b) all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

The attempt to assign claims to the members of the LLC was an illegal distribution and was properly held to be invalid.

2. The purported assignment clearly was violative of Bankruptcy Law.

NWCLF was required to disclose all assets, including potential causes of action, in their bankruptcy petition. The failure to do so violates 11 U.S.C. §§363, 521(1), 554; FED R. BANKR. P. 1007. A discharged debtor lacks legal capacity to pursue an unscheduled claim simply because the trustee, having no knowledge of the claim, took no action with respect to the claim.

DeAtley v. Barnett 127 Wn. App. 478 at 483 (2005) citing Linklater v.

Johnson, 53 Wn. App. 567 (1989). In Linklater, the court held that a party discharged in bankruptcy does not have standing to bring an action for misrepresentation when the right of action accrued prior to the bankruptcy and was neither disclosed nor administered by the bankruptcy trustee.

Linklater, at 568. The commencement of a bankruptcy case creates an estate which includes all legal or equitable interests of the debtor in property as of the commencement date.

NWCLF never disclosed any alleged claims against Price, nor obtained bankruptcy court approval of any alleged assignment of claims prior to confirmation of the plan. There was never a disclosure of potential causes of action or claims to the bankruptcy court. By not disclosing the potential claims against Price, those claims are no longer available to pursue or assign. The assignment of those claims from NWCLF to Mitchell was invalid.

Mitchell attempted to argue that once the plan was confirmed, the debtor resumed control over the assets of NWCLF and they were not required to provide notice to the court or creditors in order to assign its claims against the defendants. However, under **Linklater**, a debtor must have disclosed that claim to the bankruptcy court in order to regain control of a potential claim or cause of action. Here, since there was no disclosure, there was nothing to regain. The failure of NWCLF to disclose the claim on the bankruptcy schedule is fatal to the assignment. This was correctly held by the trial court. RP 26.

3. Judicial estoppel applies in this case.

The trial court properly dismissed the assigned claims under the theory of judicial estoppel. This approach has been followed in **DeAtley v. Barnett** and **Cunningham v. Reliable Concrete Pumping**, 126 Wn. App. 222, 108 P.3d 147 (2005). In that, based upon the evidence submitted, NWCLF and its members knew of the claim and failed to disclose it, the decision of the trial court to apply judicial estoppel was correct.

C. The Court properly denied the motion for a third amended complaint to add NW Commercial as a plaintiff.

The trial court's denial of a motion to amend a complaint is reviewed under an abuse of discretion standard and the trial court's decision will only be reversed when it is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. **Wilson v. Horsley**, 137 Wn.2d 500, 505, 974 P.2d 316 (1999); **Tex Enterprises, Inc. v. Brockway Standard, Inc.,** 110 Wn. App 197, 39 p.3d 362 (2002), reversed on different issue, 149 Wn2d 204, 66 P.3d 625 (2003).

Where a responsive pleading has been filed, a party may amend its pleading by leave of the court, and leave shall be freely given when justice so requires. CR 15(a). The purpose of this rule is to facilitate decisions on the merits, to provide parties with adequate notice of claims and defenses, and to allow amendment of the pleadings unless amendment would prejudice the

opposing party. **Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters**, 100 Wn.2d 343, 349, 670 P.2d 240 (1983). The 'touchstone for denial of an amendment is the prejudice such amendment would cause the nonmoving party.' Id. at 350. Factors considered include undue delay, unfair surprise, and jury confusion. **Herron v. Tribune Publ'g Co.**, 108 Wn.2d 162, 165-66, 736 P.2d 249 (1987).

A court may also deny a leave to amend the pleadings based on the futility of the amendment or the repeated failure of a party to cure deficiencies in prior amendments. Culpepper v. Snohomish County Dep't of Planning & Cmty. Dev., 59 Wn. App. 166, 796 P.2d 1285 (1990).

When considering a motion to amend, trial courts usually allow amendments concerning facts similar to those in the original complaint. See Herron, 108 Wn.2d at 166 ('Appellate decisions permitting amendments have emphasized that the moving parties in those cases were merely seeking to assert a new legal theory based upon the same circumstances set forth in the original pleading.'); Kirkham v. Smith, 106 Wn. App. 177, 181, 23 P.3d 10 (2001) (allowing amendment three weeks before trial because 'the trial court recognized the similarity between the essential elements of the Smith's FIPA claim and their already-existing misrepresentation claim and concluded

that the amendment would not prejudice the {non-moving party}'). Generally, the party opposing the motion to amend cannot rely merely on conclusionary allegations of prejudice and the trial court must articulate reasons for its decision. **Walla v. Johnson**, 50 Wn. App. 879, at 883, 751 P.2d 334 (1988).

Finally, in some cases, CR 15(b) Amendments To Conform to the Evidence may require pleadings to be amended. This rule states in part:

.... If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.

(Emphasis added)

When evaluating whether a proposed amendment is prejudicial, the court may consider whether it is untimely or an unfair surprise to the opposing party. Wilson, 137 Wn.2d at 505. But a motion's untimeliness alone, without more, is generally an improper reason to deny a motion to amend. Herron v. Tribune Publ'g Co., 108 Wn.2d 162, 166, 736 P.2d 249 (1987); Caruso v. Local Union No. 690 of Int'l Bhd. Of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., 100 Wn.2d 343, 349, 670

P.2d 240 (1983); Walla v. Johnson, 50 Wn. App. 879, 883, 751 P.2d 334 (1988).

The plaintiffs filed their complaint in 2004. Mitchells' first two motions to amend their complaint were freely granted. The trial judge used her discretion in denying the motion to amend the complaint for the third time finding that Mitchell had not shown good cause for amendment and that there were only two months until trial and that discovery cutoffs "have probably long since run". RP 41, 42. The motion to amend was denied not based upon untimeliness alone, but was also based upon prejudice to the parties in attempting to defend a completely new claim under a theory of corporate disregard. Therefore, the trial court correctly denied Mitchell's motion to amend for a third time.

D. The disclosure of documents through discovery resulted in a waiver.

The dissenting opinion in **Harris v. Drake**, 152 Wn.2d 480, 495, 99 P.3d 872 (2004), clearly states Washington law as it relates to privilege, work product, and waiver:

It is widely accepted that if a party voluntarily discloses documents to an opposing party, then any possible work product protection for those documents is waived. (Citations omitted). Although not all disclosures of work-product protected materials necessarily result in a waiver as to other

parties, disclosure to an adversary does result in a waiver. Because the protection is designed to protect an attorney's trial preparation and mental processes from discovery at the behest of an adversary, clearly voluntary disclosure to an adversary would almost invariably be seen as a total waiver; see also *Limstrom v. Ladenberg*, 110 Wn. App. 133, 145, 39 P.2d 351 (2002), (concluding that '[i]f a party discloses documents to other persons with the intention that an adversary can see the documents, waiver generally results').

More problematic is the situation where documents are inadvertently disclosed. Indeed, there are no Washington cases discussing the inadvertent disclosure of work product protected materials. In the absence of state precedent, we look to the Federal courts' interpretation of similar rules of civil procedure. *Am. Dis. Corp. v. Saratoga W., Inc.*, 81 Wn.2d 34, 37, 499 P.2d 869 (1972).

Mitchell correctly cites the aforementioned dissenting opinion for the proposition that if a party inadvertently discloses documents, a balancing test is applied to determine if the work product related privilege is waived. Said test includes the following four factors:

- a. The reasonableness of the precautions taken by the producing party to prevent inadvertent disclosure of privileged documents;
- b. The volume of discovery versus the extent of the specific disclosure at issue;
- c. The length of time taken by the producing party to rectify the disclosure; and
- d. The overarching issue of fairness.

In addition to the above, the dissenting opinion in **Harris**, citing **In** re **Grand Jury (Impounded)**, 138 F.3d 978, 981 (3.d Circ. 1998), also noted

at 496 that:

The Third Circuit of Appeals has noted that 'in the case of inadvertent or involuntary disclosures, the party asserting the work product doctrine must pursue all reasonable means to restore the confidentiality of the materials and to prevent further disclosures within a reasonable period to continue to receive the protection of the privilege'.

The case at hand includes both a voluntary disclosure, where any claim to privilege is waived, and, no sooner than the date of Mitchells' motion to strike, an alleged inadvertent disclosure. Mitchell did not take reasonable precautions to prevent inadvertent disclosure. All documents were produced without limitation and restriction and no privilege log was included. Further, prior to April 27, 2006 no objection was ever made. The volume of documents produced in relation to the alleged protected documents, is not so extreme so to find that the disclosure was inadvertent. There were four boxes of materials numbers 00001 - 09274. Mitchell requested that 132 documents from the total number produced, be protected.

Mitchell waited six months from the date of disclosure to object. This is not reasonable. This is especially true in that it was the defendant's respective motions for summary judgment that prompted Mitchells' to attempt to rectify the disclosure. It is quite clear that if the defendants, including Price, did not file motions for summary judgment, Mitchell would

not have objected to these documents until the time of trial.

Fairness required the trial court to deny Mitchells' motion to strike and conclude that the disclosure was voluntary. Accordingly, the trial court's decision that Mitchells' disclosure constituted a waiver, was correct.

E. Summary judgment based upon the statute of limitations was appropriate.

1. Statute of limitations affects Price and the alleged claims against them.

It was plaintiffs, despite their knowledge of claims and the right to pursue legal relief, that waited to file their action outside of the three year statute of limitation. The trial court correctly dismissed all of plaintiffs' claims against all defendants. When reviewing an order of summary judgment brought under CR 56, this court engages in the same inquiry as the trial court. **Wilson v. Steinbach**, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The reviewing court considers the facts in the light most favorable to the nonmoving party. Summary judgment is appropriate if the pleadings, affidavits, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). **Bogle & Gates**, P.L.L.C. v. Zapel 121 Wn. App. 444 at 448 (2004).

Mitchell contends in a footnote that their remaining claims involve either breaches of contract or Consumer Protection Act violations and are therefore, timely under the six-year or four year period of RCW 4.16.040(1) or RCW 19.86.120. Price does not agree for several reasons.

First, in regard to the Consumer Protection Act and the statute of limitations, this was not raised at the trial court level and cannot be raised for the first time on appeal; therefore this court should not consider it. RAP 2.5(a); RAP 9.12; Washington Fed'n of State Employees v. Office of Fin. Management, 121 Wn.2d 152, 157, 849 P.2d 1201 (1993).

In regard to the contract allegations, a written agreement for purposes of the six-year statute of limitations under RCW 4.16.080(4) must contain all the essential elements of the contract. If it is necessary to resort to parol evidence to establish any essential element, then the contract is partly oral. **Bogle & Gates, P.L.L.C v. Zapel**, 121 Wash.App. 444, 90 P.wd 703 (2004). Since there was partly oral evidence of the contracts, then any contract claims would fall under a three year statute of limitations. Additionally when all of the assigned claims were dismissed on October 31, 2005, all of the contract claims were also dismissed.

2. Appellants Cause of Action accrued when they knew or should have known that there may be injury or damage.

The statute of limitations defense pursuant to RCW 4.16.080 and Washington case law, states that an action accrues when the factual basis for the action becomes known to the party bringing the action. Generally, the statute of limitations begins to run when a party has a right to apply to a court for relief. **U.S. Oil & Refining Co. v. State Dep't of Ecology**, 96 Wn.2d 85, 91, 633 P.2d 1329 (1981). To apply for relief, each element of the cause of action must be susceptible of proof. **Haslund v. City of Seattle**, 86 Wn.2d 607, 619, 547 P.2d 1221 (1976). The purpose of statutes of limitations is to shield respondents and the judicial system from stale claims. When plaintiffs sleep on their rights, evidence may be lost and memories may fade. **Crisman v. Crisman**, 85 Wn. App. 15, 19, 931 P.2d 163 (1997).

While the determination of when a plaintiff suffered actual damage is a question of fact, the issue can be decided as a matter of law if reasonable minds could reach but one conclusion. **Allen v. State**, 118 Wn.2d 753, 760, 826 P.2d 200 (1992); **Haslund**, 86 Wn.2d at 620-21. **Hudson v. Condon**, 101 Wn. App. 866 at 875 (2000). The general rule in Washington is that when a plaintiff is placed on notice by some appreciable harm occasioned by another's wrongful conduct, the plaintiff must make further diligent inquiry to ascertain the scope of the actual harm. The plaintiff is charged with what

a reasonable inquiry would have discovered. "[0]ne who has notice of facts sufficient to put him upon inquiry is deemed to have notice of all acts which reasonable inquiry would disclose." **Hawkes v. Hoffman**, 56 Wash.120, 126, 105 P. 156 (1909). **Accord Enterprise Timber, Inc. v. Washington Title Ins. Co.**,76 Wn.2d 479, 482, 457 P.2d 600 (1969); **American Sur. Co. v. Sundberg**, 58 Wn.2d 337, 344, 363 P.2d 99 (1961) ("notice sufficient to excite attention and put a person on guard, or to call for an inquiry is notice of everything to which such inquiry might lead."), cert. denied, 368 U.S. 989, 82 S. Ct. 598, 7 L. Ed. 2d 526 (1962).

In this case, the plaintiffs were put on notice - they were obviously concerned about their investments and asked questions. Mitchell began inquiring as to the promissory notes and deeds of trust and when they consulted an attorney regarding a cause of action, the attorney cautioned them to be mindful of the statute of limitations. The Yanick memo in this case clearly provided notice to Mitchell of a potential cause of action and when Mr. Yanick believed the statute of limitations would run.

Mitchell asks this court to apply the discovery rule and toll the accrual of the cause of action until Mitchell knew all the facts necessary to establish liability and all damages. However, there is no requirement that the extent

of damages be known, just that there may be damages. Mitchell need not be aware of the full extent of the damages; knowledge of some actual, appreciable damage is sufficient to begin the running of the statute of limitations. Green v. APC,136 Wn.2d 87 at 96-97 (1998); Crisman v. Crisman, 85 Wn. App. 15, 20, 931 P.2d 163 (1997); Zaleck v. Everett Clinic, 60 Wn. App. 107, 112, 802 P.2d 826 (1991). The running of the statute is not postponed by the fact that the substantial damages occur later, and is not postponed until the specific damages occur for which Mitchell seeks recovery. Green v. APC,136 Wn.2d 87 at 96-97 (1998).

In addition to the above, no reasonable argument can be made that the factual basis of Mitchells' claim was somehow hidden or unknown. Mitchell argued to the trial court that information was fraudulently concealed. However, the record is clear that Mitchell contacted two attorneys, both of whom advised dates they believed were in accordance with the statute of limitations. Dismissal of the actions on summary judgment based upon the statute of limitations was mandated and appropriate based upon the evidence before the trial court.

F. Mitchells claims were frivolous as they were advanced with knowledge that they were beyond the statute of limitations, that the claims were based upon an invalid assignment, and that here was no evidence of or basis for personal liability against the

Prices.

1. Frivolous

RCW 4.84.185, provides as follows:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order. The provisions of this section apply unless otherwise specifically provided by statute.

A lawsuit is frivolous under RCW 4.84.185 when it cannot be supported by any rational argument on the law or facts. Smith v. Okanogan County, 100 Wn. App. 7, 24, 994 P.2d 857 (2000). Bill of Rights Legal Found. v. The Evergreen State College, 44 Wn. App. 690, 696-97, 723 P. 2d 483 (1986). The action must be viewed in its entirety and only if it is frivolous as a whole will an award of fees be appropriate. Biggs v. Vail, 119 Wn.2d 129, 133-37, 830 P.2d 350 (1992).

RCW 4.84.185 authorizes an award of attorney's fees for defending frivolous claims and was enacted to discourage abuse of the legal system by providing for an award of expenses and legal fees to any party forced to defend itself against meritless claims. **Skimming v. Boxer,** 119 Wn. App. 748, 82 P.3d 707 (2004); **Suarez v. Newquist,** 70 Wn. App. 827, 855 P.2d 1200 (1993); **Jeckle v. Crotty,** 120 Wn. App. 374, 85 P.3d 931 (2004); **Skimming v. Boxer, supra**; **Forster v. Pierce County,** 99 Wn. App. 168, 991 P.2d 687 (2000). The decision to award frivolous litigation attorney's fees is within the discretion of the trial court. **Reid v. Dalton,** 124 Wn. App. 113, 100 P.3d 349 (2004).

2. Statute of Limitations

In reference to the three year statute of limitations, the facts and issues were comprehensively briefed and argued by all parties in conjunction with the defendants' motions for summary judgment. It is clear and the trial court properly concluded, that Mitchell was aware of claims and causes of action by July 9, 2001. Contact and discussions with multiple lawyers, combined with the Miles Yanick Memorandum dated December 10, 2003, confirmed Mitchells' knowledge that the three year statute of limitations was running and "to be safe, any action should be filed no later than February, 2004".

Based upon the foregoing and the entire record in this case, Mitchell knew that the July 30, 2004 filing of their complaint was beyond the three year statute of limitations. Accordingly, the plaintiffs' action was frivolous and obviously, based upon the trial court's rulings on summary judgment, could not be supported by any rational argument based upon the law or facts. The trial court concluded that "because plaintiffs knew in December of 2003 that they were fast approaching a statute of limitations on most of their claims and because plaintiffs were clearly advised to file a claim no later than February of 2004, choosing to file such claims after that date was frivolous". CL5. Therefore, the plaintiffs' action was frivolous and the Prices were entitled to an award of reasonable expenses, including attorney's fees and costs.

3. Invalid Assignment.

The trial court concluded, supported by substantial evidence, that "choosing to pursue claims based on an invalid assignment by NW Commercial, which was in bankruptcy at the time, was frivolous". CL 4.

4. Personal Liability of Price.

The facts and issues related to the personal liability of Price were extensively briefed and argued in conjunction with the defendants' motions

for summary judgment. The Findings of Fact and Conclusions of Law clearly identify the evidence offered by the plaintiffs relative to Price. FF2; CP The Prices were members only of NW, LLC. They were not managers of any entity, were not members of the NW Commercial Loan Fund, and were not involved with day-to-day operations or managerial aspects of NW, LLC. FFCL 2; CP . Further, the Prices had no knowledge of the 1999 Graham Square assignments of deeds of trust. None of the plaintiffs were aware of any misrepresentation by the Prices or any facts in support of their claims of breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence. FFCL 2; CP _____. Further, a managing agent for NW Commercial Loan Fund did a full review of all of the records after the dispute arose with NW Commercial Loan Fund and before the lawsuit was filed, and failed to uncover any misrepresentation by Price or any facts in support of their claims of breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence.

Based upon the evidence before the trial court, both Mike Price and Tom Price are protected from personal liability pursuant to RCW 25.15.010.

The Prices cannot be personally liable unless it can be shown that they knowingly and actively participated in wrongdoing. Mitchell did not, and cannot, prove this. The Prices have repeatedly requested dismissal from this action in that there were no facts supporting Mitchells' claims of breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence against them. In fact, on November 2, 2005, a letter was sent to Mitchells' counsel questioning whether the Prices should ever have been named in this suit. Appendix E. A second letter was forward to Mitchells' counsel on January 5, 2006 which is attached as Appendix F. Pursuant to the aforementioned January 5, 2006 letter, on February 6, 2006, the defendant Tom Price met with Mitchells' counsel, reviewed all documents previously produced, and candidly answered all questions. At the end of this meeting, the Prices requested dismissal. Mitchell refused.

Based upon all evidence presented, the plaintiffs have failed to establish a basis for personal liability. The Prices had no knowledge of the assignments of deeds of trust, or the managerial and day-to-day operations of NW, LLC or NWCLF, LLC. The plaintiffs did not offer any rational argument based upon the law or facts in support of their action. Accordingly,

the trial court concluded that it "viewed the plaintiffs' action against defendants Price in its entirety and is awarding attorney's fees and costs to defendants Price because the action, as a whole, was frivolous". CL3. Both Mike and Tom Price were entitled to an award of reasonable expenses, including the attorney's fees and costs. This clearly was a correct decision by the trial court.

ATTORNEYS FEES

Under RAP 18.1(a), a party is entitled to reasonable fees and costs if an applicable law grants that right. However, to obtain costs and fees incurred on appeal, generally a party must comply with RAP 18.1 by advising the appellate court of its request. **Hedlund v. Vitale** 110 Wn. App. 183 at 188, (2002) citing **Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.**,134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998). This involves devoting "a section of the brief to the request for the fees or expenses." RAP 18.1(b). See also **Wilson Court**, 134 Wn.2d at 710 n.4. Compliance with RAP 18.1 is not necessary, however, where "a statute specifies that the request is to be directed to the trial court." RAP 18.1(a).

As stated above, RCW 4.84.185 authorizes fees and costs in this case since both Prices were the prevailing parties at the trial court level. The

Prices should not have been involved in this litigation and the trial court

agreed.

The Prices were awarded reasonable attorney's fees and costs

pursuant to RCW 4.84.185; the Prices request that the award of attorneys fees

at the trial court level be upheld. Since they were entitled to attorney fees

below, they are also entitled to fees on appeal. RAP 18.1; Richter v.

Trimberger, 50 Wn. App. 780, 786, 750 P.2d 1279 (1988). The Prices

therefore, in that they have continued to be subjected to this litigation, request

an award of attorney's fees and costs incurred on appeal in accordance with

RCW 4.84.185 and RAP 18.1.

CONCLUSION

The Prices join in and adopt the factual and legal responses of the

defendants and respectfully request this Court affirm the trial court's

decisions.

Dated this 21st day of May, 2007.

COMFORT, DAVIES & SMITH, P.S.

Steven W. Davies, WSBA# 11566

Jennifer M. Azure, WSBA #30494

Attorneys for Respondents Price

28

APPENDIX

- A. Findings of Fact and Conclusions of Law Re: Defendants Prices' Motion for Attorney's Fees and Costs entered May 18, 2007

 Judgment entered May 18, 2007

 Defendant Oldfield's Designation of Clerk's Papers dated May 18, 2007
- B. Order Granting Motion for Partial Summary Judgment entered October 31, 2005
- C. Order on Summary Judgment entered May 19, 2006
- D. Order Awarding Defendants Price Reasonable Expenses, Including Attorney's Fees and Costs entered June 23, 2006
- E. Letter to attorney Christopher L. Thayer dated November 2, 2005
- F. Letter to attorney Christopher L. Thayer dated January 5, 2006

A

10

9

17

23

21

2526

IN COUNTY CLERK'S OFFICE

A.M. MAY 1 8 2007 P.M.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROBERT R. MITCHELL, LISA TALLMAN, MITCHELL FAMILY LIVING TRUST, GARY GRENDAHL, JOANN GRENDAHL, OLYMPIC CASCADE TIMBER, INC., a Washington Corporation, GM JOINT VENTURE, a Washington Joint Venture Partnership, ROBERT R. MITCHELL, INC., a Washington corporation,

Plaintiff.

VS.

MICHAEL A. PRICE and JANE DOE PRICE, husband and wife; THOMAS W. PRICE and JANE DOE PRICE, husband and wife; JAMES REID and SONJA REID, husband and wife; KEVIN M. BYRNE and MARY BYRNE, husband and wife; ROBERT COLEMAN and JANE DOE COLEMAN; THOMAS H. OLDFIELD and JANE DOE OLDFIELD, husband and wife; NW, LLC, a Washington Limited Liability Company,

Defendants.

NO. 04 2 10247 8

FINDINGS OF FACTS AND CONCLUSIONS OF LAW RE: DEFENDANTS PRICES' MOTION FOR ATTORNEY'S FEES AND COSTS

ASSIGNED TO THE HONORABLE KATHERINE M. STOLZ

HEARING DATE: MAY 18, 2007

THIS MATTER having come before the court on a motion by defendants Price for an Order Awarding attorney's Fees and Costs based on RCW 4.84.185 and the court having considered the following:

- 1. Defendant Oldfield's Joinder in Motion of Defendants Byrne and Reid's Motion for Attorney's Fees and Costs;
- 2. Defendant Byrne and Reid's Motion for Attorney's Fees and Costs;

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1 [swd\04516\findings of fact]

COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attomeys@cdsps.com

- 3. Declaration of Alling in Support of Motion for Attorney's Fees;
- 4. Defendant Price's Memo in Support of Motion for Attorney's Fees and Costs;
- 5. Affidavit of Steven W. Davies in Support of Motion for Attorney's Fees and Costs;
- 6. Declaration of Tom Price in Support of Motion for Attorney's Fees and Costs;
- 7. Declaration of Steven Davies re: Attorney's Fees and Costs;
- 8. Declaration of J. Richard Creatura in Support of Defendant Oldfield's Joinder in Motion of Defendants Bryne and Reid's Motion for Attorney's Fees and Costs;
- 9. Plaintiff's Response to Defendant Oldfield's Motion for Attorney's Fees;
- 10. Plaintiff's Response to Defendant Price's Motion for Attorney's Fees;
- 11. Plaintiff's Response to Defendants Bryne's and Reid's Motion for Attorney's Fees;

and the court having considered the Complaint, First Amended Complaint, and all pleadings in support of and in opposition to the summary judgment motions that were previously granted by the court, having heard oral argument and being fully advised in the premises, the court makes the following:

FINDINGS OF FACT

- 1. On July 30, 2004, plaintiffs filed a Complaint for Breach of Contract, Negligence, Misrepresentation, Fraud, Breach of Fiduciary Duty, Negligence, Professional Malpractice and Violation of the Consumer Protection Act. The claims against defendants Price in this complaint included claims of breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence.
- 2. <u>Breach of Contract/Misrepresentation Claims</u>. At the time of filing the Complaint and First Amended Complaint, the plaintiffs knew the following facts:
 - a. The defendants Price were members only of NW, LLC;

- b. The defendants Price were not managers of any entity and were not members of the NW Commercial Loan Fund;
- c. The defendants Price were not involved with day-to-day operations or managerial aspects of NW, LLC;
- d. The defendants Price had no knowledge of the 1999 Graham Square assignments of deeds of trust;
- e. None of the plaintiffs were aware of <u>any</u> misrepresentation by defendants Price or any facts in support of their claims of breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence;
- f. A managing agent for NW Commercial Loan Fund did a full review of all of the records after the dispute arose with NW Commercial Loan Fund and before the lawsuit was filed and had not uncovered any misrepresentation by defendants Price or any facts in support of their claims of breach of contract, misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence.
- 3. <u>Invalid Assignment</u>. Additionally, at the time of filing the lawsuit, plaintiffs were investors in NW Commercial Loan Fund, LLC, which was in bankruptcy. Although one of the plaintiffs had purportedly assigned NW Commercial Loan Funds' claim to the plaintiffs, the assignment of the claim was made after NW Commercial Loan Fund had filed bankruptcy. NW Commercial Loan Fund had not listed any claims against defendants Price in its bankruptcy filings. NW Commercial Loan Fund had not given notice nor received permission from the bankruptcy court to assign any NW Commercial Loan Fund claims against defendants Price to insiders.
- 4. <u>Statute of Limitations</u>. At the time of filing the lawsuit in July of 2004, plaintiffs knew that most of their claims (misrepresentation, Consumer Protection Act violations, fraud, fraud in the inducement, breach of fiduciary duty, and negligence) had statute of limitations of three years or less from the time of discovery. Plaintiffs also knew that in March of 2001, more than three years before filing suit, plaintiffs and their representatives had met with defendant Byrne and defendant Oldfield to discuss the same

issues that were the subject of this litigation.

- 5. Furthermore, on July 9, 2001, more than three years before filing suit, attorney Michael H. Woodall, on behalf of plaintiffs, sent a letter to defendants setting forth substantially all of plaintiffs' claims demanding that insurers be put on notice of claims and damages to plaintiffs.
- 6. On December 20, 2003, attorney Miles A. Yanick, delivered a memorandum to plaintiffs reciting a chronology of facts regarding the litigation and advising plaintiffs "to be safe, any action should be filed no later than February 2004".
 - 7. Despite the warnings, plaintiffs did not file suit until July 30, 2004.
- 8. <u>First Motion for Partial Summary Judgment</u>. On October 31, 2005, this court granted partial summary judgment in favor of all defendants and dismissed all claims "assigned by NW Commercial Loan Fund to the Plaintiffs. (**Exhibit "A"**).
- 9. Second Motion for Summary Judgment. On May 19, 2006, after additional discovery, this court granted summary judgment in favor of all defendants and dismissed all of plaintiffs' remaining claims with prejudice. (Exhibit "B"). During the interim, defendants Price had conducted discovery and verified that none of the plaintiffs were aware of any facts in support of their claims against defendants price.
- 10. Amount of Attorney's Fees and Costs. Defendants Price incurred attorneys fees and costs in the amount of \$37,912.52 for Tom W. Price and "Jane Doe" Price and in the amount of \$30,472.71 for Michael A. Price. The amounts charged and costs incurred by defendants Prices' counsel were reasonably necessary in order to defend against plaintiffs' claims.
- 11. The plaintiffs did not object to the reasonableness of defendants Prices' attorney's fees and costs incurred.
- 12. In evaluating the "lodestar" elements of defendants Prices' claim for attorney's fees, the court makes the following findings:

- a. The records presented by defendants Prices' counsel reflect the reasonable time and labor required to defend against these claims;
- b. The amounts charged by Defendants Prices' counsel were commensurate with the novelty and difficulty of the questions involved;
- c. Defendants Prices' counsel had the requisite skill to perform the legal services properly;
- d. Although there was no evidence regarding the preclusion of other employment, the court recognizes that representing defendants Price prevented Prices' counsel from performing other services for other clients;
- e. The amounts charged by defendants Prices' counsel were customary and consistent with fees charged in the community for similar work;
- f. The case was charged on the hourly basis at a reasonable hourly rate;
- g. There were no time limitations imposed by the client;
- h. The amount of fees and costs incurred were commensurate with the results obtained;
- i. Defendants Prices' counsel had the requisite experience, reputation and ability to represent defendants Price;
- j. The subject case was not undesirable; and
- k. The award was consistent with awards in similar cases.
- 13. On June 23, 2006, the court ordered:

ORDERED, ADJUDGED and DECREED that the defendants' Price motion for an award of reasonable expenses, including attorney's fees and costs, is granted.

It is further ORDERED, ADJUDGED and DECREED that the defendants Tom W. Price and "Jane Doe" Price are awarded reasonable attorney's fees in the amount of \$35,066.00, costs in

12

151617

18 19

20

212223

24

2526

the amount of \$2,836.81, for a total award of \$37,912.52; the defendant Michael A. Price is awarded reasonable attorney's fees in the amount of \$30,463.00, costs in the amount of \$9.71, for a total award of \$30,472.71. Said defendants are entitled to judgment in the aforementioned sums with interest at the rate of twelve percent (12%) per annum from today's date until paid in full.

(Exhibit "C").

CONCLUSIONS OF LAW

- 1. A prevailing party is entitled to recover reasonable attorney's fees and expenses for defending against a frivolous action under RCW 4.84.185.
- 2. A frivolous action is one that "cannot be supported by any rational argument on the law or facts".
- 3. The court has viewed the plaintiffs' action against defendants Price in its entirety and is awarding attorney's fees and costs to defendants Price because the action, as a whole, was frivolous.
- 4. Choosing to pursue claims based on an invalid assignment by NW Commercial, which was in bankruptcy at the time, was frivolous.
- 5. Because plaintiffs knew in December of 2003 that they were fast approaching a statute of limitations on most of their claims and because plaintiffs were clearly advised to file a claim no later than February of 2004, choosing to file such claims after that date was frivolous.

Based on the foregoing Findings of Fact and Conclusions of Law, the court hereby orders that plaintiffs pay \$37,912.52 for Tom W. Price and "Jane Doe" Price and pay \$30,472.71 for Michael A. Price, plus interest at 12% per annum from June 23, 2006, and judgment shall be entered in that amount.

* * *

* * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 6 [swd\04516\findings of fact] COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attomeys@cdsps.com

DONE IN OPEN COURT this 18th day of May, 2007

Katherine M. Stolz

THE HONORABLE KATHERINE STOLZ

Presented By:

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

COMFORT, DAVIES & SMITH, P.S.

By: CTEVEN W.

STEVEN W. DAVIES, WSBA# 11566 Of Attorneys for Defendants Price

Approved as to Form; Notice of Presentment Waived

SMITH ALLING LANE

By: Douglas V. Alling, WSBA# 1896
Of Attorneys for Defendants Byrne and Reid

GORDON, THOMAS, HONEYWELL, MALANCA, PETERSON & DAHEIM LLP

By: STOPHANIE BLOOMFIELD

J. Richard Creatura, WSBA# 09185

Of Attorneys for Defendants Oldfield

WIGGINS & MASTERS

By: CHARLES K. WIGGINS, WSBA# 6948
Of Attorneys for Plaintiffs

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 7 [swd\04516\findings of fact]

COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attorneys@cdsps.com

EXHIBIT "A"

7

8

9

10

11

12

•

13

14

15

16

17

18

19

20

21

22

23

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT – Page 1

Smith Alling Lane

A Professional Services Corporation Attorneys at Law

1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Seattle: (425) 251-5938 Facsimile: (253) 627-0123

Honorable Katherine M. Stolz

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

ROBERT-R. MITCHELL; LISA TALLMAN; MITCHELL FAMILY LIVING TRUST; GARY GRENDAHL; JOANN GRENDAHL; OLYMPIC CASCADE TIMBER, INC., a Washington corporation; GM Joint Venture, a Washington joint venture partnership; and ROBERT M. MITCHELL, INC., a Washington corporation,

Plaintiffs.

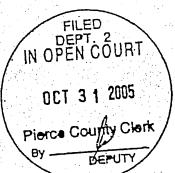
MICHAEL A. PRICE and "JANE DOE" PRICE, husband and wife; THOMAS W. PRICE and "JANE DOE" PRICE, husband and wife; JAMES REID and SONJA REID, husband and wife; KEVIN BYRNE and MARY BYRNE, husband and wife; ROBERT COLEMAN and "JANE DOE" COLEMAN, husband and wife; THOMAS H. OLDFIELD and "JANE DOE" OLDFIELD, husband and wife; and NW, LLC, a Washington limited liability company,

Defendants.

No. 04-2-10247-8

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

HEARING DATE: August 26, 2005



SMITH ALLING LAN

图 004/005 图 004

	ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT - Page 3 Lane A Professional Services Corperation Atterneys at Law Atterneys at Law Smith Alling Lane Taccma: (253) 627-1091 Sautila: (253) 627-0123
	C;i.l.
23	Attorneys for Defendants Oldfield
22	J. RICHARD CREATURA, WSBA #09185 J. BRADLEY BUCKHALTER, WSBA #29295
21	By Telland and
20	MALANCA, PETERSON & DAHEIM, LLP
19	GORDON, THOMAS, HONEYWELL,
18	Approved as to form;
17	Attorneys for Defendants Byrne and Reid
16	By
15	/ IN OPEN COOK
. 14	SMITH ALLING LANE, P.S. FILED DEPT COURT IN OPEN COURT
13	JUDGE KATHERINE M. STÖLZ Presented by:
12	F. Multh More
11	DONE IN OPEN COURT this 3757 day of September, 2005.
10	Commercial Loan Fund to the Plaintiffs are hereby dismissed.
9	IT IS FURTHER ORDERED that all claims against all Defondants assigned by NW
8_	is granted.
. 7	ORDERED that the motion of Kevin Byrne, Mary Byrne, James Reid and Sonya Reid
6	and being otherwise fully advised in the premises, NOW, THEREFORE, it is hereby
6	together with the records and pleadings on file herein, and having heard argument of counsel
4	Judgment;
3	12. Declaration of J. Richard Creatura in Support of Motion for Partial Summary
2	Judgment; and
1	11. Declaration of Thomas Oldfield in Support of Motion for Partial Summary

1	THIS MATTER having come before the Court upon Defendants KEVIN BYRNE,				
2	MARY BYRNE, JAMES REID and SONYA REID's Motion for Partial Summary Judgment				
3	the Court having considered the following:				
4	Defendants Byrne and Reid's Memorandum in Support of Motion for Partial				
5	Summary Judgment;				
6	Declaration of Kevin Byrne in Support of Motion for Partial Summary				
7	Judgment;				
8	3. Plaintiffs' Joint Response to Defendants' Motions for Partial Summary				
9	Judgment;				
10	4. Declaration of Gary Grendahl in Response to Motions for Partial Summary				
11	Judgment;				
12	5. Declaration of William Stevens in Response to Motions for Partial Summary				
13	Judgment;				
14	6. Declaration of Robert Mitchell in Response to Motions for Partial Summary				
15	Judgment;				
16	7. Defendants Byrne and Reid's Reply in Support of Motion for Summary				
17	Judgment;				
18	8. Thomas and "Jane Doe" Oldfield's Motion for Partial Summary Judgment;				
19	9. Declaration of J. Bradley Buckhalter in Support of Motion for Partial				
20	Summary Judgment with attached exhibits;				
21	10. Defendants Oldfield's Reply Memorandum Re: Motion for Partial Summary				
22	Judgment;				
23					
	ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT – Page 2 Smith Alling Lane A Professional Services Corporation Attorneys at Lane A Command Services Corporation Attorneys at Lane A Facsimile: (253) 627-0123				

COMFORT DAVIES & SMITH 2 STEVEN W. DAVIES, WSBA #11566 3 Attorneys for Defendants Price 4 LARSON HART & SHEPHERD 5 6 Ву CHRISTOPHER L. THAYER, WSBA #23609 Attorneys for Plaintiffs... 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT - Page 4

23

Smith Alling Lane

A Professional Services Corporation
Attorneys at Law

1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Searde: (425) 251-4938 Facsimile: (253) 627-0123

15

16

17

18

19

20

21

22

23

COMFORT DAVIES & SMITH 2 By_ STEVEN W. DAVIES, WSBA #11566 3 Attorneys for Defendants Price 4 LARSON HARTENIE 5 6 .7 Attorneys for Plaintiffs 8 9 10 11 12 13

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT - Page 4

Smith Alling Lane

A Professional Services Corporation Attorneys at Low 1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 827-1091 Seattle: (425) 251-5938 Facsimile: (253) 827-0123

EXHIBIT "B"

2 3 5 Honorable Katherine M. Stolz 6 7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE 8 ROBERT R. MITCHELL, et al., 9 No. 04-2-10247-8 Plaintiffs, 10 ORDER ON SUMMARY JUDGMENT 11 MICHAEL A. PRICE, et al., 12 Defendants. 13 14 KEVIN AND MARY BYRNE, 15 Third Party Plaintiffs, 16 17 WILL STEVENS, et al., 18 Third Party Defendants. 19

FILED DEPT. 2 IN OPEN COURT MAY 19 2006 Pierce County Clerk DEPUTY

THIS MATTER having come before the court upon Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims, the court having before it the records and files herein, having heard argument of counsel, and having considered the following:

ORDER ON SUMMARY JUDGMENT - Page 1

20

21

22

23

Smith Alling

A Professional Services Corporation Attorneys at Law

1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Seattle: (425) 251-5938 Facsimile: (253) 627-0123

 Defendant Oldfield's Motion for Summary Judgme
--

- 2. Declaration of J. Richard Creatura in Support of Motion for Summary ent;
- 3. Declaration of Thomas H. Oldfield in Support of Motion for Summary Judgment;
- 4. Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;
 - 5. Declaration of Kevin Byrne in Support of Motion for Summary Judgment;
- 6. Declaration of Douglas V. Alling in Support of Motion for Summary Judgment;
- 7. Defendants Price's Joinder in Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;
- 8. Joint Declaration of Price in Support of Joinder in Defendants Byrne and Reid's Motion for Summary Judgment;
- 9. Affidavit of Steven W. Davies Re Joinder in Byrne and Reid's Motion for Summary Judgment;
- 10. Plaintiffs' Joint Response in Opposition to Defendant Oldfield's Motion for Partial Summary Judgment;
- 11. Plaintiffs' Joint Response to Defendants Price's Joinder to Motion for Summary Judgment;
- 12. Plaintiffs' Joint Response to Defendants' Byrne and Reid's Motion for Summary Judgment;

Facsimile: (253) 627-0123

1	13. Declaration of Robert Coleman in Response to Motion for Summary
2	Judgment;
3	14. Declaration of Christopher Thayer in Support of Plaintiffs' Opposition to
4	Defendants' Motion for Summary Judgment;
5	15. Declaration of Christopher Thayer in Support of Plaintiffs' Opposition to
6	Defendant Oldfield's Motion for Summary Judgment;
7	16. Declaration of William Stevens;
8	17. Declaration of Lisa Tallman;
- 9	=18. Declaration of Robert-Mitchell;
10	19. Declaration of Gary Grendahl;
11	20. Declaration of Tim Jacobson;
12	21. Defendants Byrne and Reid's Reply in Support of Motion for Summary
13	Judgment for Dismissal of Plaintiffs' Claims;
14	22. Oldfield's Reply Re: Oldfield's Motion for Summary Judgment;
15	23. Declaration of J. Richard Creatura;
16	24. Defendants' Price Reply in Support of Summary Judgment; and
17	25. Affidavit of Steven W. Davies in Reply in Support of Summary Judgment.
18	NOW, THEREFORE, it is hereby
19	ORDERED, ADJUDGED AND DECREED that Defendants Byrne and Reid's
20	Motion for Summary Judgment is granted.
21	
22	



1	IT IS FURTHER ORDERED, ADJUDGED AND	
2	Plaintiffs against Defendants Byrne and Reid are dismissed	d with prejudice.
. 3	DONE IN OPEN COURT this day of May,	2006.
4	Jothornia Land	1 / Well
5	JUDGE KATHERIN	E M. STOLZ
6	Presented by:	FUED
7	SMITH ALLING LANE, P.S.	FILED DEPT. 2 IN OPEN COURT
. 8		
9 _	By All	MAY 1 9 2006
10	DOUGLAS V. ALLÍNG, WSBA #1896 Attorneys for Defendants Byrne and Reid	Pierce County Clerk By DEPUTY
11		
12	BY STEVEN W. DAVILS #11526	
13	ATTORNETS FOR PACE	
14		
15	The fall of	
16	#236091 111111	
18	Atty / Majest 1/	
19		
20		
21		
22		
23		

Smith Alling Lane

Attorneys at Law

A Professional Services Corporation

1102 Broadway Plaza, #403

Tacoma, Washington 98402 Tacoma: (253) 627-1091 Seattle: (425) 251-5938 Facsimile: (253) 627-0123

ORDER ON SUMMARY JUDGMENT – Page 4

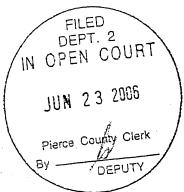
EXHIBIT "C"

21

23 24

.25

26



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROBERT R. MITCHELL, LISA TALLMAN, MITCHELL FAMILY LIVING TRUST, GARY GRENDAHL,
JOANN GRENDAHL, OLYMPIC
CASCADE TIMBER, INC., a Washington
Corporation, GM JOINT VENTURE, a
Washington Joint Venture Partnership,
ROBERT R. MITCHELL, INC., a
Washington corporation Washington corporation,

Plaintiff.

VS.

MICHAEL A. PRICE and JANE DOE PRICE, husband and wife; THOMAS W. PRICE and JANE DOE PRICE, husband and wife; JAMES REID and SONJA REID, husband and wife; KEVIN M. BYRNE and MARY BYRNE, husband and wife; ROBERT COLEMAN and JANE DOE COLEMAN; THOMAS H. OLDFIELD and JANE DOE OLDFIELD, husband and wife; NW, LLC, a Washington Limited Liability Company, Defendants. NO. 04 2 10247 8

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES INCLUDING ATTORNEY' FEES AND COSTS

This matter having come before the court upon the defendants' Price motion pursuant to RCW 4.84.185 for an award of reasonable expenses, including attorney's fees and costs, the court having before it the records and files herein, having heard argument of counsel, and having considered the following:

Defendant Oldfield's Motion for Summary Judgment;

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS -1 [swd\04516\order.atty's fees]

COMFORT, DAVIES & SMITH, P.S. 1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attorneys@cdsps.com

1 2	2.	Declaration of J. Richard Creatura in Support of Motion for Summary Judgment;
3	3.	Declaration of Thomas H. Oldfield in Support of Motion for Summary Judgment;
4 5	4.	Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;
6	5.	Declaration of Kevin Byrne in Support of Motion for Summary Judgment;
7	6.	Declaration of Douglas V. Alling in Support of Motion for Summary Judgment;
8 - 9	7.	Defendants Price's Joinder in Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;
-10	8.	Joint-Declaration of Price in Support of Joinder in Defendants Byrne and Reid's Motion for Summary Judgment;
11 12	9.	Affidavit of Steven W. Davies Re Joinder in Byrne and Reid's Motion for Summary Judgment;
13	10.	Plaintiffs' Joint Response in Opposition to Defendant Oldfield's Motion for Partial Summary Judgment;
14 15	11.	Plaintiffs' Joint Response to Defendants Price's Joinder to Motion for Summary Judgment;
16	12.	Plaintiffs' Joint Response to Defendants' Byrne and Reid's Motion for Summary Judgment;
17 18	13.	Declaration of Robert Coleman in Response to Motion for Summary Judgment;
19	14.	Declaration of Christopher Thayer in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment;
20	15.	Declaration of William Stevens;
21	16.	Declaration of Lisa Tallman;
22	17.	Declaration of Robert Mitchell;
23	18.	Declaration of Gary Grendahl;
24	19.	Declaration of Tim Jacobson;
2526	20.	Defendants Byrne and Reid's Reply in Support of Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;

It is further ORDERED, ADJUDGED and DECREED that the defendants Tom W.

Price and "Jane Doe" Price are awarded reasonable attorney's fees in the amount of

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 3 [swd\04516\order.atty's fees]

24

25

26

COMFORT, DAVIES & SMITH, P.S. 1901 65th Avenue West, Suite 200

Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356

E-mail - Attornevs@cdsps.com

26

\$35,066.00, costs in the amount of \$2,836.81, for a total award of \$37,912.52; the defendant Michael A. Price is awarded reasonable attorney's fees in the amount of \$30,463.00, costs in the amount of \$9.71, for a total award of \$30,472.71. Said defendants are entitled to judgment in the aforementioned sums with interest at the rate of twelve percent (12%) per annum from today's date until paid in full.

DONE IN OPEN COURT this 23rd day of June, 2006.

THERINE M. STOLZ

FILED DEPT. 2

IN OPEN COURT

JUN 23 2006

Pierca County/Clerk

Presented By:

COMFORT, DAVIES & SMITH, P.S.

STEVEN W. DAVIES, WSBA# 11566 Of Attorneys for Defendants Price

Approved as to Form; Notice of Presentment Waived-

SMITH ALLING LANE

Douglas V. Alling, WSBA# 1896 Of Attorneys for Defendants Byrne and Reid

ORDER AWARDING DEFENDANTS PRICE

REASONABLE EXPENSES, INCLUDING

ATTORNEY'S FEES AND COSTS - 4

COMFORT, DAVIES & SMITH, P.S.

E-mail - Attorneys@cdsps.com

[swd\04516\order.atty's fees]

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 5

17

18

19

20

21

22

23

24

25

26

COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356

[swd\04516\order.atty's fees] F-mail - Attorneve@indens.com

IN COUNTY CLERK'S OFFICE

A.M. MAY 1 8 2007 P.M.

PIEBOE COUNTY EASTENDTON KEVIN STOCK, COUNTY CLERK DESIRED

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROBERT R. MITCHELL, LISA TALLMAN, MITCHELL, LISA
TALLMAN, MITCHELL FAMILY
LIVING TRUST, GARY GRENDAHL,
JOANN GRENDAHL, OLYMPIC
CASCADE TIMBER, INC., a Washington
Corporation, GM JOINT VENTURE, a
Washington Joint Venture Partnership,
ROBERT R. MITCHELL, INC., a
Washington corporation Washington corporation,

Plaintiff.

VS.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MICHAEL A. PRICE and JANE DOE PRICE, husband and wife; THOMAS W. PRICE and JANE DOE PRICE, husband and wife; JAMES REID and SONJA REID, husband and wife; KEVIN M. BYRNE and MARY BYRNE, husband and wife; ROBERT COLEMAN and JANE DOE COLEMAN; THOMAS H. OLDERELD and JANE DOE OLDERELD. OLDFIELD and JANE DOE OLDFIELD, husband and wife; NW, LLC, a Washington Limited Liability Company,

Defendants.

NO. 04 2 10247 8

JUDGMENT

ASSIGNED TO THE HONORABLE KATHERINE M. STOLZ

HEARING DATE: May 18, 2007

Clerk's Action Required

JUDGMENT SUMMARY

Judgment creditors

Tom W. Price and "Jane Doe" Price Michael A. Price

Judgment debtors 26

Robert R. Mitchell; Lisa Tallman; Mitchell Family Living Trust; Gary Grendahl; Joann

JUDGMENT-1 [swd\04516\judgment] COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attorneys@cdsps.com

Grendahl; Olympic Cascade Timber, Inc. a Washington Corporation; GM Joint Venture, a Washington joint venture partnership; and Robert M. Mitchell, Inc., a Washington corporation

Principal Judgment Amount for Tom W. Price and "Jane

Doe" Price

\$37,912.52

Principal Judgment Amount for Michael A. Price

\$30,472.71

Interest judgment date

Twelve percent (12%) per annum on total from June 23, 2006 until paid in full

Attorney for judgment

creditors

Steven W. Davies, Esq. Comfort, Davies & Smith, P.S. 1901 65th Avenue W, Ste 200 Fircrest WA 98466

JUDGMENT

On June 23, 2006 the court entered an Order Awarding Defendants Price Reasonable Expenses, Including Attorney's Fees and Costs in favor of defendants Price, which granted fees against the plaintiffs herein, jointly and severally, and in favor of defendants Tom W. Price and "Jane Doe" Price in the amount of \$37,912.52 and in favor of defendant Michael W. Price in the amount of \$30,472.71. Attached hereto as an exhibit is a true and correct copy of that order.

Pursuant to RCW 4.56.110, interest shall accrue on this amount at the rate of twelve percent (12%) from the date of entry of the judgment. And further, as the June 23, 2006 order required, interest from June 23, 2006 until paid in full.

Judgment is hereby entered in this amount and the Clerk of the Court is hereby instructed to enter said judgment in the execution docket of this court and to comply with such other procedures as may be required of clerks in carrying out that office, including the proper filing of this judgment.

DONE IN OPEN COURT this 18th day of May, 2007.

Katherine M. Stolz

JUDGE KATHERINE M. STOLZ

Presented by:

COMFORT, DAVIES & SMITH, P.S.

7 By: 6

STEVEN W. DAVIES, WSBA# 11566

10 11

1

2

3

4

5

6

8

9

Approved as to Form; Notice of Presentment

12 13

14

15

16

17

18 19

20

21

22 23

24

25

26

JENNIFER M. AZURÉ, WSBA# 30494 Of Attorneys for Defendants Price

Waived

SMITH ALLING LANE

By: DOUGLAS ALLING

Douglas V. Alling, WSBA# 1896 Of Attorneys for Defendants Byrne and Reid

GORDON, THOMAS, HONEYWELL, MALANCA, PETERSON & DAHEIM LLP

By: STEPHANIE BLOOMFIELD

J. Richard Creatura, WSBA# 09185 Of Attorneys for Defendants Oldfield

JUDGMENT - 3 [swd\04516\judgment] COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attorneys@cdsps.com

WIGGINS & MASTERS

By: CHARLES K. WIGGINS, WSBA# 6948
Of Attorneys for Plaintiffs

JUDGMENT - 4
[swd\04516\judgment]

COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attorneys@cdsps.com

EXHIBIT



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROBERT R. MITCHELL, LISA TALLMAN, MITCHELL FAMILY LIVING TRUST, GARY GRENDAHL, JOANN GRENDAHL, OLYMPIC CASCADE TIMBER, INC., a Washington Corporation, GM JOINT VENTURE, a Washington Joint Venture Partnership, ROBERT R. MITCHELL, INC., a Washington corporation,

Plaintiff,

VS.

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

MICHAEL A. PRICE and JANE DOE PRICE, husband and wife; THOMAS W. PRICE and JANE DOE PRICE, husband and wife; JAMES REID and SONJA REID, husband and wife; KEVIN M. BYRNE and MARY BYRNE, husband and wife; ROBERT COLEMAN and JANE DOE COLEMAN; THOMAS H. OLDFIELD and JANE DOE OLDFIELD, husband and wife; NW, LLC, a Washington Limited Liability Company,

NO. 04 2 10247 8

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS

This matter having come before the court upon the defendants' Price motion pursuant to RCW 4.84.185 for an award of reasonable expenses, including attorney's fees and costs, the court having before it the records and files herein, having heard argument of counsel, and having considered the following:

1. Defendant Oldfield's Motion for Summary Judgment;

Defendants.

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 1 [swd\04516\order.atty's fees] COMFORT, DAVIES & SMITH, P.S. 1901 65th Avenue West, Suite 200 Tacoma. Washington 98466-6225

(253) 565-3400 • Fax (253) 564-5356 E-mail - Attorneys@cdsps.com

1 2	2.	Declaration of J. Richard Creatura in Support of Motion for Summar Judgment;
3	3.	Declaration of Thomas H. Oldfield in Support of Motion for Summar Judgment;
4 5	4.	Defendants Byrne and Reid's Motion for Summary Judgment for Dismissa of Plaintiffs' Claims;
6	5.	Declaration of Kevin Byrne in Support of Motion for Summary Judgment;
7	6.	Declaration of Douglas V. Alling in Support of Motion for Summary Judgment;
8 9	7.	Defendants Price's Joinder in Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;
-10	8.	Joint Declaration of Price in Support of Joinder in Defendants Byrne and Reid's Motion for Summary Judgment;
11 12	9.	Affidavit of Steven W. Davies Re Joinder in Byrne and Reid's Motion for Summary Judgment;
13	10.	Plaintiffs' Joint Response in Opposition to Defendant Oldfield's Motion for Partial Summary Judgment;
14 15	11.	Plaintiffs' Joint Response to Defendants Price's Joinder to Motion for Summary Judgment;
16	12.	Plaintiffs' Joint Response to Defendants' Byrne and Reid's Motion for Summary Judgment;
17 18	13.	Declaration of Robert Coleman in Response to Motion for Summary Judgment;
19	14.	Declaration of Christopher Thayer in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment;
20	15.	Declaration of William Stevens;
21	16.	Declaration of Lisa Tallman;
22	17.	Declaration of Robert Mitchell;
23	18.	Declaration of Gary Grendahl;
24	19.	Declaration of Tim Jacobson;
2526	20.	Defendants Byrne and Reid's Reply in Support of Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;

Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356

E-mail - Attorneys@cdsps.com

award of reasonable expenses, including attorney's fees and costs, is granted.

It is further ORDERED, ADJUDGED and DECREED that the defendants Tom W. Price and "Jane Doe" Price are awarded reasonable attorney's fees in the amount of

24

25

26

26

\$35,066.00, costs in the amount of \$2,836.81, for a total award of \$37,912.52; the defendant Michael A. Price is awarded reasonable attorney's fees in the amount of \$30,463.00, costs in the amount of \$9.71, for a total award of \$30,472.71. Said defendants are entitled to judgment in the aforementioned sums with interest at the rate of twelve percent (12%) per annum from today's date until paid in full.

DONE IN OPEN COURT this 23rd day of June, 2006.

FILED

DEPT. 2 IN OPEN COURT

JUN 23 2006

Presented By:

COMFORT, DAVIES & SMITH, P.S.

STEVEN W. DAVIES, WSBA Of Attorneys for Defendants Price

Approved as to Form; Notice of Presentment Waived

SMITH ALLING LANE

Douglas V. Alling, WSBA# 1896

ORDER AWARDING DEFENDANTS PRICE

REASONABLE EXPENSES, INCLUDING

ATTORNEY'S FEES AND COSTS - 4

Of Attorneys for Defendants Byrne and Reid

COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356

[swd\04516\order.atty's fees]

E-mail - Attorneys@cdsps.com

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 5 [swd\04516\order.atty's fees]

COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356 E-mail - Attorneys@cdsps.com

2

3

4

5

6

7

8

9

10 11

12

13

14

15

16

17

18

19

20 21

22

23 24

25

26

RECEIVED MAY 2 1 2007

CUMPURI, DAVIES & SMITH, P.S. LAWYERS

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

ROBERT R. MITCHELL, et al

Plaintiff,

v.

MICHAEL A. PRICE, et al

Defendants.

KEVIN AND MARY BYRNE,

Third Party Plaintiffs,

v.

WILL STEVENS, et al.,

Third Party Defendants.

NO. 04-2-10247-8

Court of Appeals No. 35291-5

DEFENDANT OLDFIELD'S DESIGNATION OF CLERK'S PAPERS

ASSIGNED TO THE HONORABLE KATHERINE M. STOLZ

TO THE CLERK OF THE COURT:

Please prepare the following document or exhibits for transmittal to the Court of Appeals of the State of Washington:

NO.	DOCUMENT	DATE FILED
1.	Motion for Judgment (Def. Oldfield)	5/9/07
2.	Motion for Judgment (Def. Byrne)	5/9/07
3.	Motion for Judgment (Def. Price)	5/10/07

OLDFIELD DES. OF CLERK PAPERS - 1 of 2 (04-2-10247 8) [1382104 v2.doc]

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-8500 - FACSIMILE (253) 620-6565

4.	Objections/Opposition of Plaintiff	5/16/07
5.	Reply of Defendant Oldfield	5/17/07
6.	Affidavit/Declaration of Counsel	5/17/07
7.	Reply of Defendant Byrne	5/17/07
8.	Judgment (Def. Oldfield)	5/18/07
9.	Judgment (Def. Byrne)	5/18/07
10.	Judgment (Def. Price)	5/18/07
11.	Findings of Fact and Conclusions of Law (Def. Oldfield)	5/18/07
12.	Findings of Fact and Conclusions of Law (Def. Byrne)	5/18/07
13.	Findings of Fact and Conclusions of Law (Def. Price)	5/18/07

Dated this 18th day of May, 2007.

GORDON, THOMAS, HONEYWELL, MALANCA, PETERSON & DAHEIM LLP

Stephanie Bloomfield, WSBA No. 24251

sbloomfield@gth-law.com

Attorneys for Defendant/Respondent Oldfield

B

9...

10

11

12

13

14

15

16

17 18

19

20

21

22

23

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT - Page 1

Smith Alling Lane

Attorneys at Law

1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Seattle: (425) 251-5938 Facsimile: (253) 627-0123

Honorable Katherine M. Stolz

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

ROBERT-R. MITCHELL; LISA TALLMAN; MITCHELL FAMILY LIVING TRUST; GARY GRENDAHL; JOANN GRENDAHL: OLYMPIC CASCADE TIMBER, INC., a Washington corporation; GM Joint Venture, a Washington joint venture partnership; and ROBERT M. MITCHELL, INC., a Washington corporation,

Plaintiffs.

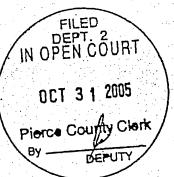
MICHAEL A. PRICE and "JANE DOE" PRICE. husband and wife; THOMAS W. PRICE and "JANE DOE" PRICE, husband and wife; JAMES REID and SONJA REID, husband and wife; KEVIN BYRNE and MARY BYRNE. husband and wife; ROBERT COLEMAN and "JANE DOE" COLEMAN, husband and wife: THOMAS H. OLDFIELD and "JANE DOE" OLDFIELD, husband and wife; and NW, LLC, a Washington limited liability company,

Defendants.

No. 04-2-10247-8

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

HEARING DATE: August 26, 2005



SMITH ALLING LAN

tmont Ø 004/005

Declaration of Thomas Oldfield in Support of Motion for Partial Summary 11. Judgment; and 2 Declaration of J. Richard Creatura in Support of Motion for Partial Summary 12. 3 4 Judgment; together with the records and pleadings on file herein, and having heard argument of counsel 6 and being otherwise fully advised in the premises, NOW, THEREFORE, it is hereby 6 ORDERED that the motion of Kevin Byrne, Mary Byrne, James Reid and Sonya Reid 7 _8_ is granted. IT IS FURTHER ORDERED that all claims against all Defondants assigned by NW 9 Commercial Loan Fund to the Plaintiffs are hereby dismissed. 10 Ofto ber DONE IN OPEN COURT this 11 day of September, 2005. 12 13 JUDGE KATHERINE M. STÖLZ Presented by: FILED 14 IN OPEN'COURT SMITH ALLING LANE, P.S. 15 OCT 31 2005 16 Pierce County Clerk 17 Attorneys for Defendants Byrne and Reid . 18 Approved as to form; 19 GORDON, THOMAS, HONEYWELL, MALANCA, PETERSON & DAHEIM, LLP 20 21 J. RICHARD CREATURA, WSBA #09185 22 L'BRADLEY BUCKHALTER, WSBA #29295 Attorneys for Defendants Oldfield 23 Smith ORDER GRANTING MOTION FOR PARTIAL 1102 Broadway Plaza, #403 Alling Tacoma, Washington 98402 SUMMARY JUDGMENT - Page 3 Lane Tacoma: (253) 627-1091

A Professional Services C

Attorneys at Law

Santis: (425) 251-5938

Facsimile: (253) 527-0123

1	THIS MA	TTER having come before th	e Court upon Def	endants KEVIN BYRNE,	
2	MARY BYRNE,	MARY BYRNE, JAMES REID and SONYA REID's Motion for Partial Summary Judgment,			
3	the Court having o	the Court having considered the following:			
4	1. De	fendants Byrne and Reid's M	emorandum in Su	pport of Motion for Partial	
5	Summary Judgmen	nt;			
6	2. Dec	laration of Kevin Byrne in S	upport of Motion	for Partial Summary	
. 7	Judgment;				
8	3. Plai	ntiffs' Joint Response to Defe	endants' Motions	for Partial Summary	
9	Judgment;				
10	4. Dec	aration of Gary Grendahl in	Response to Moti	ons for Partial Summary	
11	Judgment;				
12	5. Decl	aration of William Stevens in	Response to Mo	tions for Partial Summary	
13	Judgment;				
14	6. Decl	aration of Robert Mitchell in	Response to Mot	ions for Partial Summary	
15	Judgment;				
16	7. Defer	ndants Byrne and Reid's Rep	ly in Support of N	Motion for Summary	
. 17	Judgment;				
18	8. Thom	8. Thomas and "Jane Doe" Oldfield's Motion for Partial Summary Judgment;			
19	9. Decla	9. Declaration of J. Bradley Buckhalter in Support of Motion for Partial			
20	Summary Judgment	with attached exhibits;		•	
21	10. Defen	dants Oldfield's Reply Memo	orandum Re: Mo	tion for Partial Summary	
22	Judgment;				
23					
	ORDER GRANTING SUMMARY JUDGM	MOTION FOR PARTIAL ENT – Page 2	Smith Alling Lane A Professional Services Col Attorneys at Lanu	1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Poration Seattle: (425) 251-5938 Facsimile: (253) 627-0123	

COMFORT DAVIES & SMITH 1 2 Bý STEVEN W. DAVIES, WSBA #11566 3 Attorneys for Defendants Price 4 LARSON HART & SHEPHERD 5 6 CHRISTOPHER L. THAYER, WSBA #23609 Attorneys for Plaintiffs... 7. 8 9 10 .11 12 13 14 15 16 17 18 19 20 21

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT – Page 4

22

23

Smith Alling Lane

A Frafesilanal Strvicts Corporation
Attorneys at Law

1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Searde: (425) 251-5938 Facsimile: (253) 627-0123

COMFORT DAVIES & SMITH 2 By_ STEVEN W. DAVIES, WSBA #11566 3 Attorneys for Defendants Price 4 LARSON HARTESHE 5 8 By .7 Attorneys for Plaintiffs 8 9 10 11 12 13 14 15 16 17 18 19

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT - Page 4

20

21

22

23

Smith Alling Lane

A Professional Services Corporation
Attorneys at Loss

1102 Broadway Pieza, #403 Tacoma, Washington 98402 Tacoma: (253) 827-1091 Secula: (425) 251-5938 Faccimile: (253) 827-0123

C

2 3 4 5 Honorable Katherine M. Stolz 6 7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE 8 ROBERT R. MITCHELL, et al., 9 No. 04-2-10247-8 Plaintiffs, 10 ORDER ON SUMMARY JUDGMENT 11. MICHAEL A. PRICE, et al., 12 FILED DEPT. 2 IN OPEN COURT Defendants. 13 14 KEVIN AND MARY BYRNE, MAY 1 9 2006 15 Third Party Plaintiffs, Pierce County Clerk 16 DEPUTY 17 WILL STEVENS, et al., 18 Third Party Defendants. 19 THIS MATTER having come before the court upon Defendants Byrne and Reid's 20

THIS MATTER having come before the court upon Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims, the court having before it the records and files herein, having heard argument of counsel, and having considered the following:

ORDER ON SUMMARY JUDGMENT – Page 1

21

22

23

Smith Alling Lane

A Professional Services Corporation
Attorneys at Law

1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Seattle: (425) 251-5938 Facsimile: (253) 627-0123

Smith Alling Lane

Attorneys at Law

A Professional Services Corporation

1102 Broadway Plaza, #403 Tacoma, Washington 98402 Tacoma: (253) 627-1091 Seattle: (425) 251-5938 Facsimile: (253) 627-0123

1	13. Declaration of Robert Coleman in Response to Motion for Summary
2	Judgment;
3	14. Declaration of Christopher Thayer in Support of Plaintiffs' Opposition to
4	Defendants' Motion for Summary Judgment;
5	15. Declaration of Christopher Thayer in Support of Plaintiffs' Opposition to
6	Defendant Oldfield's Motion for Summary Judgment;
7	16. Declaration of William Stevens;
8	17. Declaration of Lisa Tallman;
9	=18. Declaration of Robert-Mitchell;
10	19. Declaration of Gary Grendahl;
11	20. Declaration of Tim Jacobson;
12	21. Defendants Byrne and Reid's Reply in Support of Motion for Summary
13	Judgment for Dismissal of Plaintiffs' Claims;
14	22. Oldfield's Reply Re: Oldfield's Motion for Summary Judgment;
15	23. Declaration of J. Richard Creatura;
16	24. Defendants' Price Reply in Support of Summary Judgment; and
17	25. Affidavit of Steven W. Davies in Reply in Support of Summary Judgment.
18	NOW, THEREFORE, it is hereby
19	ORDERED, ADJUDGED AND DECREED that Defendants Byrne and Reid's
20	Motion for Summary Judgment is granted.
21	
22	

1	IT IS FURTHER ORDERED, ADJUDGE			
2	Plaintiffs against Defendants Byrne and Reid are	dismissed with prejudi	ce.	
. 3	DONE IN OPEN COURT this day	of May, 2006.	1// (4	7
4		and 1	Will	
5	JUDGE KA	THERINE M. STOLZ		
6				
7	Presented by:	N OP	FILED EPT. 2 EN COURT	
8	SMITH ALLING LANE, P.S.) / IN OP	ENCOURT	
9	Ala	MAY	1 9 2006	
10	DOUGLAS V. ALLING, WSBA#1896	Pierce (County Clerk	
11	Attorneys for Defendants Byrne and Reid		DEPUTY	
12	84 EL 2014 # 1153 6			
13	STEVEN N. DAVILS #11546 ATTORNETS FOR PACE			
14	1 ATTOR			
15	114/1/			
16	F02/60	7		
. 17	The Market of			
18	KAY DO JOSEPH J			
19				
20				
21				
22				
23				
	ORDER ON SUMMARY JUDGMENT – Page 4	Smith	1102 Broadway Plaza, #403	
		Alling Lane A Professional Services Corporation	Tacoma, Washington 98402 Tacoma: (253) 627-1091 Seattle: (425) 251-5938	
		Attorneys at Law	Facsimile: (253) 627-0123	

D

20

21

22

23

24

25

26

FILED
DEPT. 2
IN OPEN COURT

JUN 23 2005

Pierce County Clerk

By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

ROBERT R. MITCHELL, LISA TALLMAN, MITCHELL FAMILY LIVING TRUST, GARY GRENDAHL, JOANN GRENDAHL, OLYMPIC CASCADE TIMBER, INC., a Washington Corporation, GM JOINT VENTURE, a Washington Joint Venture Partnership, ROBERT R. MITCHELL, INC., a Washington corporation,

Plaintiff.

VS.

MICHAEL A. PRICE and JANE DOE PRICE, husband and wife; THOMAS W. PRICE and JANE DOE PRICE, husband and wife; JAMES REID and SONJA REID, husband and wife; KEVIN M. BYRNE and MARY BYRNE, husband and wife; ROBERT COLEMAN and JANE DOE COLEMAN; THOMAS H. OLDFIELD and JANE DOE OLDFIELD, husband and wife; NW, LLC, a Washington Limited Liability Company,

Defendants.

NO. 04 2 10247 8

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS

This matter having come before the court upon the defendants' Price motion pursuant to RCW 4.84.185 for an award of reasonable expenses, including attorney's fees and costs, the court having before it the records and files herein, having heard argument of counsel, and having considered the following:

1. Defendant Oldfield's Motion for Summary Judgment;

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 1 [swd\04516\order.atty's fees] COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200
Tacoma, Washington 98466-6225
(253) 565-3400 • Fax (253) 564-5356
E-mail - Attomeys@cdsps.com

1 2	2.	Declaration of J. Richard Creatura in Support of Motion for Summary Judgment;	У
3	3.	Declaration of Thomas H. Oldfield in Support of Motion for Summary Judgment;	y
5	4.	Defendants Byrne and Reid's Motion for Summary Judgment for Dismissa of Plaintiffs' Claims;	1
6	5.	Declaration of Kevin Byrne in Support of Motion for Summary Judgment;	
7	6.	Declaration of Douglas V. Alling in Support of Motion for Summary Judgment;	,
8 - 9	7.	Defendants Price's Joinder in Defendants Byrne and Reid's Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;	•
- 10 -	8.	Joint Declaration of Price in Support of Joinder in Defendants Byrne and Reid's Motion for Summary Judgment;	
11 12	9.	Affidavit of Steven W. Davies Re Joinder in Byrne and Reid's Motion for Summary Judgment;	
13	10.	Plaintiffs' Joint Response in Opposition to Defendant Oldfield's Motion for Partial Summary Judgment;	
14 15	11.	Plaintiffs' Joint Response to Defendants Price's Joinder to Motion for Summary Judgment;	
16	12.	Plaintiffs' Joint Response to Defendants' Byrne and Reid's Motion for Summary Judgment;	
17 18	13.	Declaration of Robert Coleman in Response to Motion for Summary Judgment;	
19	14.	Declaration of Christopher Thayer in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment;	
20	15.	Declaration of William Stevens;	
21	16.	Declaration of Lisa Tallman;	
22	17.	Declaration of Robert Mitchell;	
23	18.	Declaration of Gary Grendahl;	
24	19.	Declaration of Tim Jacobson;	
25 26	20.	Defendants Byrne and Reid's Reply in Support of Motion for Summary Judgment for Dismissal of Plaintiffs' Claims;	
H			

24

25

26

It is further ORDERED, ADJUDGED and DECREED that the defendants Tom W.

Price and "Jane Doe" Price are awarded reasonable attorney's fees in the amount of

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 3 [swd\04516\order.atty's fees]

24

25

26

26

\$35,066.00, costs in the amount of \$2,836.81, for a total award of \$37,912.52; the defendant Michael A. Price is awarded reasonable attorney's fees in the amount of \$30,463.00, costs in the amount of \$9.71, for a total award of \$30,472.71. Said defendants are entitled to judgment in the aforementioned sums with interest at the rate of twelve percent (12%) per annum from today's date until paid in full.

DONE IN OPEN COURT this 23rd day of June, 2006.

FILED DEPT. 2

IN OPEN COURT

JUN 23 2006

Pierce County/Clerk

Presented By:

COMFORT, DAVIES & SMITH, P.S.

Of Attorneys for Defendants Price

Approved as to Form; Notice of Presentment Waived

SMITH ALLING LANE

Douglas V. Alling, WSBA# 1896 Of Attorneys for Defendants Byrne and Reid

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 4 [swd\04516\order.atty's fees]

COMFORT, DAVIES & SMITH, P.S. 1901 65th Avenue West, Suite 200

Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356

E-mail - Attorneys@cdsps.com

ORDER AWARDING DEFENDANTS PRICE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS - 5

[swd\04516\order.atty's fees]

15

16

17

18

19

20

21

22

23

24

25

26

COMFORT, DAVIES & SMITH, P.S.

1901 65th Avenue West, Suite 200 Tacoma, Washington 98466-6225 (253) 565-3400 • Fax (253) 564-5356

E-mail - Attorneys@cdsps.com

• • •

E

Comfort, Davies & Smith, P.S.

Brian T. Comfort Steven W. Davies Michael B. Smith Brett L. Wittner

November 2, 2005

Christopher L. Thayer, Esq. Kenneth W. Hart, Esq. Larson Hart & Shepherd One Union Square 600 University St Ste 1730 Seattle WA 98101

RE: Mitchell, et al v. Price, et al/CR 26(i)
Pierce County Cause No. 04 2 10247 8

Dear Mr. Thayer:

As you know, my discovery requests have been outstanding for quite some time. You agreed to provide me with your clients' answers and supporting documents a number of months ago. Please advise as to when I can expect to receive your answers and responses.

As to the depositions of Mike and Tom Price, I indicated to you previously that their respective schedules are open. If you can provide me with reasonable notice (approximately two weeks) and a couple of suggested dates, I am confident that we will be able to accommodate all schedules.

I have indicated to you on a number of occasions that it is our belief that my clients should never have been named in this lawsuit. This is especially true in light of the court's order on summary judgment. I can appreciate the court inferring that all discovery must be completed before individual parties will be dismissed from this action. Based upon this, I am sure you can appreciate how anxious my clients are to complete discovery. As indicated above, they are available for depositions and I am anxious for you to review the documents in my possession so to confirm that the Prices were not managers of any of the relevant entities. Both Mike Price and Tom Price had very little knowledge relative to the activities of Northwest Commercial Loan Fund.

Christopher L. Thayer, Esq. Kenneth W. Hart, Esq. Page Two November 2, 2005

Please give me a call.

Very truly yours,

COMFORT, DAYTES & SMITH, P.S.

Steven W. Davies

SWD:rel cc: Client

[swd\04516\thayer3.ltr]

F

Comfort, Davies & Smith, P.S.

Brian T. Comfort Steven W. Davies Michael B. Smith

January 5, 2006

Christopher L. Thayer, Esq. Kenneth W. Hart, Esq. Larson Hart & Shepherd One Union Square 600 University St Ste 1730 Seattle WA 98101

RE: Mitchell, et al v. Price, et al
Pierce County Cause No. 04 2 10247 8

Dear Mr. Thayer:

This correspondence is intended to confirm our conversation occurring on Wednesday, January 4, 2006.

My clients will agree to meet informally with you prior to their deposition. However, as I indicated to you, it is their belief that they never should have been included in this lawsuit and never should have been forced to incur attorney's fees and costs. Although it is a dismissal that they ultimately seek, both Mike and Tom Price should be reimbursed for fees and costs incurred.

You requested contact information for Kerry Keely. It is as follows:

56716 68th Avenue Ct. W University Place WA 98467

565-8179 (home)

221-2504 (work)

Should you have any questions regarding the above, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

COMFORT, DAVJES & SMITH, P.S.

Steven W. Davies

SWD:rel cc: Client

[swd\04516\thayer5.ltr]

07 MAY 21 PM 4: 47

NO.: 35291-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

ROBERT R. MITCHELL, et al, Appellants

v.

MICHAEL A. PRICE, et al, Respondents.

DECLARATION OF SERVICE

COMFORT, DAVIES & SMITH, P.S. Steven W. Davies, WSBA 11566 1901 65th Ave. W. Ste 200 Fircrest, WA 98466 (253)565-3400

Attorneys for Respondents Price



Danielle S. Mallek, certifies and states as follows:

I am a citizen of the United States of America, a resident of Pierce County, Washington, over the age of twenty-one (21) years and competent to be a witness in the above-entitled cause.

That on the 21st day of May, 2007, I forwarded a true and correct copy of the *Responsive Brief of Respondents Price* by facsimile and on the 22nd day of May, 2007, I forwarded a true and correct copy of aforesaid document by either ABC Legal Messenger or first class mail in connection with the above-captioned matter to the following address:

J. Richard Creatura, Esq Gordon Thomas Honeywell Malanca Peterson & Daheim LLP 1201 Pacific Ave., Ste. 2100 Tacoma, WA 98401-1157 Via legal messenger

Douglas V. Alling, Esq Smith Alling Lane, PS 1102 Broadway Plaza, #403 Tacoma, WA 98402 Via legal messenger

Charles K. Wiggins, Esq. Wiggins & Masters PLLC 241 Madison Ave. N Bainbridge Island, WA 98110-1811 Via first class mail and facsimile to (206) 842-6356

I declare under the penalty of perjury of the laws of the state of Washington that the foregoing statement is true and correct.

Dated at Fircrest, Washington this 21st day of May, 2007.

Danielle S. Mallek